

# EXECUTIVE SUMMARY

The focus of this report is two fold. The first is to report the work and accomplishments of the Independent Police Auditor's office (IPA) and the second is to make recommendations for changes that will better align the IPA with the public's expectations.

## CHAPTER ONE - Introduction

The first chapter chronicles the recommendations made over a span of six years since the establishment of the IPA office. The following are some of the recommendations that were adopted and implemented by the San José Police Department (SJPD).

- The entire citizen complaint process was overhauled to standardize the manner in which complaints are received, classified, documented and tracked.
- Changes were also made to improve communications with complainants and to make the intake process more user-friendly.
- Adopted policies included an "Onlooker Policy" which outlines a citizen's right to observe from a safe distance a police action.
- Use of Force Investigations require that supervisors immediately investigate the reason for the need to use force.
- A policy was drafted that requires that supervisors approve strip searches before being conducted.
- A new unit was created to provide oversight of officers working off-duty.
- The IPA started gathering and reporting complaints by the ethnicity of the complainant and subject officer.
- A policy now requires that police officers provide their name or badge number in writing to a citizen upon request,
- Changes in practice were implemented whenever an officer requests that blood be forcibly drawn for evidence.
- The IPA requested that its jurisdiction be expanded to include a review of all officer involved shootings.

## **CHAPTER TWO - New Issues**

In Chapter Two of the IPA's 1999 Year End Report, three new issues are introduced, Strengthening the Complaint Process to meet the public's expectations, Voluntary Mediation, and Improving Officer Communication Skills.

### **A. STRENGTHENING THE COMPLAINT PROCESS TO MEET THE PUBLIC'S EXPECTATIONS**

#### **1. Personalizing IPA Communications with the Complainants**

The IPA was designed to broadly impact the citizen complaint process through policy changes that deter the reoccurrence of similar misconduct rather than focusing on the outcome of individual complaints. While it is important to address policy changes because it has a broader impact, it is also important to meet the specific needs of the individual citizen who is filing a complaint. Currently, the IPA communicates with complainants whenever they initiate contact or through form letters. More time needs to be spent informing and updating complainants and making them feel a part of the citizen complaint process. In order to accomplish this, added staff needs to be allocated to communicate and interface with individual complainants. Two often heard criticisms of this office by complainants are that the IPA has no subpoena or investigative powers.

#### **2. Subpoenas for Civilian Witness**

A recurring problem that is encountered in the investigation of citizen complaints is the problem of how can an investigator compel a witness to divulge much needed information. Subpoenas and subpoenas duces tecum are used in the judicial system to summon witnesses and/or documents respectively. There are two types of witnesses in the citizen complaint investigation process to whom subpoenas would apply, police officers and citizens. Under current practice, police officers must attend when summoned by the Professional Standards and Conduct Unit (PSCU) to an interview concerning the investigation of a citizen complaint. Subject and witness officers must respond to all questions not in violation of the Police Officers Bill of Rights or they may be subject to discipline for insubordination, up to and including termination.

Currently, neither the PSCU nor the IPA has the authority to compel a citizen witness to be interviewed or release and/or provide physical evidence such as medical records that may be an integral part of an investigation. Because of this, subpoenas are needed for citizen witnesses. It would be counterproductive to compel complainants to make a statement if they don't desire to follow through with their complaint.

However, subpoenas would be very useful in cases where a witness is reluctant to get involved for whatever reason, but may be more inclined to cooperate if they are summoned. In addition, subpoenas duces tecum, which are used to subpoena records are very necessary and often provide the most reliable evidence.

The City Council could grant the PSCU the authority to issue subpoenas similar to the Civil Service Commission and the City Attorney. Because the PSCU has the responsibility for conducting complaint investigations, it is appropriate that they be given the authorization to issue subpoenas. Providing the PSCU with subpoena power would enhance the investigative process and provide another tool for increasing public confidence in the complaint process. Additionally, the IPA could benefit by working with PSCU to compel reluctant witnesses to divulge information or by securing physical evidence that may be discovered during the audit or follow-up investigation process. Having this capability could be a win-win for both the PSCU and the IPA.

#### RECOMMENDATION

Have the City Council grant the PSCU subpoena power to compel the attendance of civilian witnesses, to compel the production of documentary or physical evidence and to administer oaths and affirmations.

### **3. Follow-up Investigations**

The other criticism of the Independent Police Auditor is that it has no investigative power. While it is true that the primary investigative unit is the Professional Standards & Conduct Unit, the IPA nevertheless conducts follow-up investigations as part of the audit. These investigations are done once the investigation has been completed by the PSCU and forwarded to the IPA for auditing. Follow-up investigations include such steps as interviewing witnesses to compare their statements to the statements contained in the PSCU investigation, inspecting the scene, reviewing all the police reports and examining all the physical evidence. The only restriction imposed by the Municipal Code is that questioning of police officers be done through a PSCU investigator. This restriction does not preclude the Auditor from questioning the officers; it only adds an intermediary to repeat the questions from the Auditor to the officer.

There is a lack of familiarity by the general public with the work and responsibility of the IPA. The IPA monitors ongoing investigations and audits completed investigations. People assume that an audit is strictly the examination of documents. To address this concern, the IPA needs to invest in informing the public through various marketing mediums. The IPA should identify and utilize terms that have wider

recognition and understanding in the community. The IPA should use general terms such as “follow-up investigation” to describe what an audit of an investigation of a citizen complaint entails. This is not currently done because the term investigation is not expressly mentioned in the IPA’s policies and procedures. Therefore, it is recommended that the City Council amend the Municipal Code to define a citizen complaint audit and clarify that a follow-up investigation is an integral component of an audit.

#### RECOMMENDATION

Amend the Municipal Code to define a citizen complaint audit and clarify that an audit includes a follow-up investigation.

### **B. PROPOSED VOLUNTARY MEDIATION PROGRAM**

Over the past several years the IPA and the Chief of Police have discussed the benefits of providing an alternative process for mitigating minor complaints against officers. The voluntary mediation program as proposed by the IPA, could be an alternative to the formal investigation process and could provide an opportunity to facilitate meaningful dialog between the complainant and the officer.

The process begins when a citizen has a concern with the actions of an officer and chooses to file a complaint. The complaint is reviewed and if it is determined to be minor in nature, such as a question of policy, discourtesy, or procedure, the complaint may be considered for resolution through mediation. If the complaint meets the criteria for mediation, the complainant and the officer are then asked if they would be interested in resolving the complaint through the mediation process. If both parties agree, the complaint is forwarded to a neutral third party mediator. Once the complaint has been mediated, the mediator submits a confidential report to the Chief of Police. This report is retained by the PSCU for statistical purposes only. Once the complaint has been mediated, the complaint allegation is removed from the officer’s record of complaints.

#### RECOMMENDATION

It is recommended that the SJPd explore the feasibility of implementing a voluntary mediation program within the next six months.

### **C. IMPROVING POLICE COMMUNICATION SKILLS**

In analyzing many complaints filed in 1999, the IPA identified a pattern indicating that in a significant number of police to citizen contacts, it appears that the officers did not communicate effectively and that this failure to communicate may have led to a physical confrontation, the filing of a citizen complaint or a negative opinion of the police department. Several of the complaints reviewed in preparation of this report had a common theme; citizens alleged that the officer did not explain, respond to questions or listen to them. The majority of the cases involved traffic stops and searches of homes and/or cars. The majority of the cases were a one on one resulting in a stalemate. Some of the conduct, while inappropriate, did not rise to the level of misconduct.

Failing to communicate effectively can be costly. It increases the cost of police services and waste human resources. When an officer terminates a call for service and leaves the citizen uninformed, it leads to frustrated citizens seeking redress from different agencies or at different levels of the same agency, resulting in duplicate effort and compounding costs. People will sometimes complain to the IPA, PSCU, Chief of Police, a City Council Member or the Mayor about the same incident.

A review of the current training offered at the Police Academy and the ongoing police in-house training found that communication skills is an area that is incorporated into several courses but there is no training that specifically addresses day to day communications or proper etiquette in addressing the public.

#### **RECOMMENDATIONS**

1. The SJPD should design a training course focused specifically on improving day to day verbal communications when dealing with the public.
2. In cases where the police erred, i.e. the wrong home was searched, an explanation and/or apology should be given as soon as possible, preferably at the onset.
3. Motorists should be told the reason for the enforcement action such as a stop, search, and detention as soon as possible and preferably at the onset.
4. The SJPD should formalize a process whereby an officer is assigned to be the contact person or liaison to family members of people that were killed or died in police custody in an effort to assist the family and/or provide them with necessary but non-confidential information.

## **CHAPTER 3 - Community Outreach**

### **A. Community Presentations**

The IPA did presentations in nine of ten council districts, but overall, districts 3, 5 and 6 requested the most presentations. The Professional Standards and Conduct Unit (PSCU) and beat officers assigned to the district are also invited by the IPA to take part in the presentations. The benefit of having the beat officers present is that it provides community members with an opportunity to meet the officers, share concerns and talk about problems in their neighborhood. In 1999 the IPA addressed hundreds of people through community presentations.

### **B. Referral Sites**

One of the goals for the IPA in 1999 was to establish at least one referral site per council district. Currently, there are 17 referral sites located in five different council districts and one that serves the Islamic community which operates out of the office of the Council on American Islamic Relations located in the city of Santa Clara. The main function of a referral site is to serve as an information center for residents who may be seeking information on how to file a citizen complaint. It is the opinion of the IPA that a person will feel more comfortable filing a complaint, if they first make contact at a local community organization where they can talk with someone familiar and who can refer them to the IPA.

The IPA has provided the staff at each referral site with an orientation session as well as a binder that contains detailed information about the IPA office, the complaint process, a list of phone numbers for social and legal services. The IPA has also provided the referral centers with copies of our "Commonly Asked Questions" brochure, which has been translated into five different languages (Spanish, Tagalog, Samoan, Vietnamese, and Korean).

Through these information centers, the IPA has increased its visibility and accessibility to the public in their own neighborhood. The referral sites have been very successful in referring complaints to the IPA and informing the IPA of any concerns or problems in their neighborhood.

### **C. Media Relations**

The Auditor was busy this year participating in television and radio interviews. The Auditor was a guest on "The Filipino American Journal," a monthly television program produced by KTSF Channel 26 that addresses issues and concerns in the Filipino/Asian community. The IPA also participated on the radio show

“In the Public Eye,” on KBAY; in “Youth Today and Tomorrow” on KVVN 1430 AM, a Vietnamese language radio talk show geared towards parents and young adults; and on KLOK-RadioTri-Color, a Spanish-speaking radio station that addresses issues and concerns in the Hispanic/Latino community.

The Auditor gave on camera interviews to Channel 14-Univision, KPIX-Channel 5, KTVU-Channel 2, KRON-Channel 4, KNTV-Channel 11, and Channel 48-Telemundo. In addition, KBCI-Boise, Idaho, and News 12-Connecticut traveled to San José to interview the Auditor.

#### **D. Inquiries about the IPA**

The success and reputation of the IPA has caught the eye of many national and international organizations. Organizations, such as Amnesty International, London, and the Criminal Justice Commission, Australia, have requested materials and information about the IPA.

In October 1999, the Auditor was invited by officials from the City of Riverside, California, to meet with them and provide them with information about the IPA. The City of Riverside is in the process of implementing a model of police oversight similar to the IPA.

In December, the Police Oversight Focus Group from the City of Austin, Texas, met with the IPA. The IPA conducted a half-day presentation for the focus group on the history, background, responsibilities, and structure of the IPA. In addition, the IPA scheduled meetings with community leaders and city officials for the focus group.

Also, in December, the City of Oakland Citizen Police Review Board (CPRB) Task Force requested the IPA to make a presentation about the structure and functions of the office.

The IPA model has been adopted by cities throughout the country. Most recently the city of Sacramento, California; Boise, Idaho; and Tucson, Arizona established police oversight offices modeled after the IPA.

#### **E. Community Forum**

In 1999, officer-involved shootings and cases alleging racial profiling raised questions and concerns.

Therefore, on December 13, 1999, the IPA held a town hall and panel discussion meeting at the Mexican Heritage Plaza to discuss police misconduct issues. The goal of the meeting was to provide the residents with an opportunity to voice their concerns and to hear from different agencies working in the field of Civil

Rights violations, police accountability and police misconduct. The following professionals took part in the panel discussion: Honorable Frank Fiscalini, Vice Mayor; William Lansdowne, San José Police Chief; Teresa Guerrero-Daley, Independent Police Auditor; Karyn Sinunu, Assistant District Attorney; John Tennant, General Counsel, Police Officers' Association; Carol Russo, United States Department of Justice, Community Relations Services; Merylee Shelton, Chair, Human Rights Commission. The panel discussion was broadcasted live on KGO Newstalk AM 810 and moderated by radio talk show host Gene Burns.

## **CHAPTER 4 - Updates on Prior Issues and Recommendations**

### **A. Officer-Involved Shooting Incident Training Review Panel**

In the IPA's 1998 Year End Report, the IPA recommended that all officer-involved shootings resulting in injury or death be subjected to review whether or not a complaint is filed with the IPA or the PSCU. In July of 1999, the Chief of Police advised that in response to the IPA's recommendation he was establishing an officer involved shooting review process. The purpose of this review process would be to review all officer-involved shootings to determine if any training needs exist or if any changes need to be made to a current police policy or procedure.

During the past year SJPd officers were involved in eight shootings, seven of which resulted in fatal injuries to the suspects. Although the review panel has only been empanelled since August of 1999, the review panel was able to review seven of the eight officer-involved shootings. One shooting incident is still pending a Grand Jury review therefore, it has not been sent to the review panel for evaluation. As a member of the review panel the Independent Police Auditor participated in all seven shooting reviews and provided input as necessary. Because the Chief of Police has indicated that he will be issuing a summary report to the city council on the issue of officer-involved shootings, the Independent Police Auditor will defer reporting on the actions of the panel until the Chief's report has been submitted to the city council.

### **B. Blood Samples Taken By Force**

In the IPA's 1997 and 1998 Year End Reports, the IPA reported on the status of the policy change for drawing blood samples from uncooperative and/or combative suspects. The current procedure calls for putting a combative suspect in a body restraint called a WRAP, before taking the suspect to the pre-processing center for booking.

A close review of the SJPd policy and guideline for processing combative or disruptive suspects at the



preprocessing center appears to have had a positive impact in decreasing the number of complaints filed. As reported last year, the members of the department have positively received the duty manual changes that address the taking of blood samples. The IPA strongly encourages the department to continue its efforts to make the preprocessing center a safe and sterile environment. The IPA is pleased to report that only one complaint has been filed alleging the forcible extraction of blood outside of the preprocessing center.

### **C. Citizen Request for Officer Identification**

The SJPD Duty Manual now directs officers to identify themselves when the public makes a request. Officers are required to provide the requesting person with an incident card that contains the officer's name and badge number. During the past year the IPA audited seven cases where the complainant alleged officers refused to identify themselves. Even though the IPA has raised this issue for several years, and SJPD has made strong efforts to minimize this type of procedural complaints, it remains troubling that on seven occasions this type of procedural violation was alleged. The IPA will continue to monitor this issue.

### **D. On scene investigations following a use of force**

As reported in the 1998 Year End Report, the IPA expressed concern with what appeared to be a significant number of cases that were being resolved based solely on the information provided by the officer and/or the complainant without the benefit of other witnesses or physical evidence.

Because complaint information generally comes from a complainant who is unhappy with a police contact, without the benefit of an independent witness, the issue becomes a matter of credibility, who are you going to believe? This type of conflict usually casts an eye of suspicion on unfavorable findings because the public for the most part believes police misconduct investigations have always been biased towards the officer.

By policy, a supervisor must respond to an incident which results in serious injury to a suspect or officer. The supervisor is responsible for assuring that physical evidence is collected and preserved and if witnesses are available, that they be interviewed. In all cases, the supervisor is responsible for approving the Crime Report and/or other appropriate investigative reports prepared by the officer(s) documenting the use of force. Therefore, the supervisor should immediately investigate the circumstances and document in a supplemental report, the facts and his/her supervisory actions.

In 1999, the IPA again conducted a special audit of cases investigated after the new procedure was set in place to determine whether physical evidence is being collected adequately and how closely the new procedures are followed by officers and supervisors. A study of all the serious Use of Force complaints audited during 1999 revealed that supervisors were required to respond to the scene and/or collect evidence eight times. The IPA audit found that of the eight cases, only one appeared to not have a written report by the supervisor. In the case without an apparent written report, the PSCU investigation indicated that the supervisor responded to the hospital and taped an interview with the complainant, but evidence of a separate written report could not be verified. The compliance rate for supervisor intervention at use of force calls in 1999 was outstanding, especially considering that in 1998, compliance was found only in approximately 50% of the required use of force incidents.

#### **E. Timeliness**

This has been an area that has required ongoing revision and monitoring in the past years. Although the IPA has been tracking the time taken to complete an investigation since its inception, it has only been two years that SJPD has been working with a protocol for completing cases in departments outside the PSCU. In 1998, there were 250 Formal complaints audited, of which 63 or 25% were not completed within the required goal of 365 days. In 1999, there was a marked improvement, of the 117 Formal cases audited, there was 100% completion rate within the stated goal. All the cases were investigated within the required time, even though the goal was reduced to 300 days. The staff at the PSCU should be commended for this effort.

#### **F. Vehicle Stop Demographic Study**

On December 17, 1999, San José Chief of Police, William M. Lansdowne, released data from a study that was developed to address the issue of alleged racial profiling by members of the San José Police Department (SJPD). The study, which was initiated by the SJPD, on June 1, 1999, covers a three-month period, from July 1, 1999 through September 31, 1999. It should be noted that the SJPD was the first police department in California to implement this type of study and provide data regarding vehicle stop activity by its officers. The SJPD should be applauded and recognized for this effort.

The IPA agrees with the SJPD that statistical data should be gathered for a minimum of one year. In addition, the type of enforcement action should also be documented to reflect whether a citation, arrest or search was conducted. Lastly, the SJPD should use census information to determine the ethnicity of the population of each police district.

## **CHAPTER 5 - Year End Statistics**

There was an increase in overall citizen contacts at the IPA and PSCU. These contacts were classified accordingly depending on the nature of the call. The more serious allegations were classified as Formal Complaints. There were 199 Formal Complaints filed by a citizen in 1999. This is 25% higher than in 1998, which recorded a total of 149 Formal Complaints. The total number of contacts in 1999, which were classified as either Formal, Informal, Procedural, Policy Complaints, No Boland and Inquiry was 819 up from 717 in 1998. For a complete breakdown see Chapter 5.

## **CHAPTER 6 - Complaints and Allegations by Council District**

In 1999 the highest number of complaints originated in District 3 followed by District 5 and District 7. These same Districts also had the highest number of Unnecessary Force allegations in similar order. The total number of Unnecessary Force allegations went up this year from 159 in 1998 to 183 in 1999 for a 13% increase. However, the type of force used in 1999 involved primarily force inflicted by hands while force using a baton went down in 1999. There was also an increase in most other type of allegations except for Unofficerlike Conduct which recorded a drop of 35%.

## **CHAPTER 7 – Sustain Rate and Discipline Imposed**

There were 54 total disciplines imposed in 1999 ranging from Training or Counseling to Termination. Most significant is that for the first time in six years, 3 allegations filed by a citizen involving Unnecessary Force were sustained, one resulting in termination.

## **CHAPTER 8 – Intervention Counseling**

The Intervention Counseling Program is used as an “early warning system” to track police officers with multiple complaints for the purpose of identifying potential problems and providing guidance. Officers receiving 3 formal complaints or a combination of five of any type of complaint within a year are referred to Intervention Counseling. In 1999, fifteen (15) different officers received Intervention Counseling. In the last five years, 81 officers have received intervention counseling.

## **CHAPTER 9 – Background of Subject Officers**

Officers assigned to patrol receive the majority of complaints, which is natural since they also have the highest number of police to citizen contacts. The second group with the highest number of complaints is the Narcotic Enforcement Team.

Male officers receive complaints (96%) in proportion to the number of male officers in the police department (92%); while female officers receive only half as many complaints (4%) as the number of females (8%) in the SJPd.

There is very little difference in the ethnicity of officers in the SJPd in proportion to the number of complaints they receive. African American, Hispanic Latino, Native American and Filipino American have one percent or less in deviation between the number of complaints they receive and the number of officers in the police department. European American officers make up 62% of the SJPd force but receive only 59% of the complaints while Asian American officers make up 7% of the police force and receive 11% of the complaints.

Officers with two to four years of experience have consistently received the majority of complaints (41%) even though they make up only 19% of the police force. This same group received the majority of Unnecessary Force allegations.

Of the 1379 officers in the SJPd in 1999, 268 different officers received complaints. However, only 67 different officers received two or more complaints. Therefore, 20% of the SJPd received at least one complaint while only .05% received multiple complaints.

## **CHAPTER 10 – Background of Complainants**

In 1999, 67% of complaints were filed by males. The largest age group filing complaints was between the age of 31 to 59 years. The ethnic group filing the most complaints was the Hispanic Latino. They filed 32% of the complaints and make up approximately 31% of the San Jose population. Hispanic Latino complainants filed just as many complaints against European American officers (57) as they did against minority officers (55), collectively.

Twenty nine percent (29%) of the complainants self reported having a High School Diploma or below education while 33% reported having a college or Graduate degree. The majority of the complainants declined to state their occupation.

## **CHAPTERS 11 & 12 – Complaint Audits**

All complaints received some level of review. The review in some types of complaints looked at the intake process to examine not only the information but also the manner in which the information was taken. After auditing the initial contact with the complainant, the classification of that complaint is reviewed to insure that serious complaints are fully investigated.

The Formal Complaints, which are the most serious, receive a higher level of scrutiny. In 1999, 118 Formal Complaints were audited. Of the 118 complaints, the IPA disagreed on the finding in 6 cases or 5% even after further investigation and after conferring with the Chief of Police. In 1998, out of the 250 audited complaints, the IPA disagreed with the finding in 45 or 18% of the cases. This is a reduction in the number of cases where the IPA and the Chief of Police disagreed.

Chapter 12 provides seven case audit summaries to give examples of how the IPA conducts the audits, the different actions taken and examples of the options available to the IPA.

## **CHAPTER 13 - Conclusion**

As in previous years, 1999 recorded significant number of accomplishments. Pending recommendations were adopted and implemented such as the Officer-Involved Shooting Review Panel. The review panel as developed by the Chief of Police, includes the IPA as a member.

In the 1998 Year End Report, the IPA made a commitment to increase community outreach during 1999. The IPA was successful in establishing alternative sites where the IPA can maintain direct contact with the community and distribute office literature. With the development of seventeen referral sites that are spread throughout the city, the IPA has developed a network of resources that can address the growing needs of the community. The IPA will continue to expand its use of referral sites and provide staff training at these sites to enhance the mission of the IPA.

The IPA also went on-line with its web site during the past year. The web site provides information regarding the functions of the IPA and has a site for accessing prior Year End Reports. Citizens can also file complaints through electronic mail.

The IPA will continue to work on achieving its objectives in furtherance of its mission. One of the goals for the 2000 year is to focus community outreach to the youth in the City of San José. The IPA will report on its progress and challenges in the 2000 Year End Report.